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From:

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To:

Cc:

Subject: controlled group rules of sections 52 and 1563

Here is how the controlled group rules work in this area:

Section 172(b)(1)(H) as in effect at the time the taxpayer made its election defined an eligible small business within the meaning of section 448(c) substituting \$15 million for \$5 million.

Section 448(c) provides for a gross receipts test. In determining whether that test is met, section 448(c) also applies the aggregation rules of section 52(a) or (b).

Section 52(a) provides that the term "controlled group of corporations" has the same meaning given to such term by section 1563(a), with modifications that are not relevant here.

Section 1563(a)(2) provides for a 50% test for a brother-sister controlled group. However, section 1563(a) begins, for purposes of this part. This "part" is sections 1561 and 1563. Thus, the 50% test only applies for purposes of section 1561.

Section 1563(f)(5) provides that for all other purposes of the Code, section 1563(a)(2) shall mean both a 50% test and an 80% test. In this case, the taxpayer does not satisfy the 80% test (as I understand the facts the taxpayer owns all the stock of one S corporation but only 55% of the other S corporation). Therefore, the two "S" corporations are not members of a controlled group. Consequently, the \$15 million income limitation is applied separately to each corporation.

Please let me know if you have any other questions.

Thanks,